
United States
Circuit Court of Appeals
For the Ninth Circuit.

LINDA H. HALE,

Appellant.

vs.

CLIFFORD C. ANGLIM, Individually, and as
Collector of Internal Revenue for the First
District of California,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED
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No. 10505

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer	8
Appeal:	
Certificate of Clerk to Transcript of Record on	68
Designation of Record on (DC).....	66
Designation of the Record to Be Printed on (CCA)	70
Notice of	66
Order for Delivery of Exhibits on.....	68
Statement of Points Upon Which Appellant Intends to Rely on (CCA).....	72
Stipulation re Contents of Record on.....	67
Certificate of Clerk to Transcript of Record on Appeal	68
Complaint	2
Designation of Record on Appeal (DC).....	66
Designation of the Record to Be Printed (CCA)	70
Findings of Fact and Conclusions of Law....	19
Judgment	25

Names and Addresses of Attorneys of Record.	1
Notice of Appeal.....	66
Opinion	10
Order for Delivery of Exhibits to CCA.....	68
Order for Judgment.....	18
Statement of Points Upon Which Appellant Intends to Rely on Appeal (CCA).....	72
Stipulation re Contents of Record on Appeal.	67
Transcript of Proceedings.....	26
Exhibits for Plaintiff:	
1—Claim for Refund.....	32
2—Agreement, June 18, 1937, Linda Hoag Hale and Prentis Cobb Hale, Jr.	37
3—Last Will and Testament of Pren- tiss Cobb Hale, Sr.....	44
4—Decree of Ratable Distribution, Dated December 22, 1937.....	50
5—Decree of Partial Distribution, Dated July 14, 1937.....	51
Witnesses for Plaintiff:	
Hill, J. Gordon	
—direct	60
—cross	64
Sanford, Lee	
—direct	54
—cross	57

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In the Southern Division of the United States
District Court for the Northern District
of California

Action at Law

No. 22344-S

LINDA H. HALE,

Plaintiff,

vs.

CLIFFORD C. ANGLIM, individually and as Col-
lector of Internal Revenue for the First District
of California,

Defendant.

COMPLAINT TO RECOVER TAXES PAID

Plaintiff complains of defendant and for cause
of action alleges that:

I.

At all times herein mentioned, Defendant Clifford
C. Anglim was the duly qualified, appointed and
acting Collector of United States Internal Revenue
for the First District of California, and at all times
herein mentioned was and now is a citizen of the
State of California residing in the Northern Judicial
District of California.

II.

This is a cause of actual controversy of a civil
nature arising under a law of the United States
providing for Internal Revenue, to wit, Section 22

of the Revenue Act of 1936 enacted June 22, 1936, (49 Stat. 1648) as amended by the Revenue Act of 1937 (50 Stat. 813). [1*]

III.

On or about the 14th day of March, 1938, there was duly and regularly made and filed with defendant on behalf of plaintiff her United States Treasury Department Form 1040, Individual Income Tax Return, for the calendar year 1937, which said Form 1040 reflected net income in the amount of Fifty Seven Thousand Sixteen and $73/100$ (\$57,016.73) Dollars. The amount of income tax shown to be payable on said Form 1040 filed by plaintiff for the calendar year 1937 was Eleven Thousand Seven Hundred Ninety four and $53/100$ (\$11,794.53) Dollars. Plaintiff paid to defendant in three (3) installments during the calendar year 1938, all of the tax shown to be due by plaintiff's Individual Income Tax Return Form 1040 for the calendar year 1937, to wit, Eleven Thousand Seven Hundred Ninety four and $53/100$ (\$11,794.53) Dollars.

IV.

Plaintiff erroneously and improperly included in the gross income reported by plaintiff in her said Individual Income Tax Return for the calendar year 1937, an amount of Six Thousand Two Hundred Thirty (\$6,230.00) Dollars received by plaintiff pursuant to the provisions of an agreement dated June 18, 1937, between plaintiff and her son, Prentis Cobb

*Page numbering appearing at foot of page of original certified Transcript of Record.

Hale, Jr., which said agreement is referred to in more detail hereinafter in Paragraph V of this complaint. Neither said sum of Six Thousand Two Hundred Thirty (\$6,230.00) Dollars nor any part thereof constitutes gross income of plaintiff subject to the tax under the Revenue Act of 1936 enacted June 22, 1936 (49 Stat. 1648) as amended by the Revenue Act of 1937 (50 Stat. 813).

V.

With respect to the said agreement dated June 18, 1937 between plaintiff and her son, Prentis Cobb Hale, Jr., and referred to in Paragraph IV hereof, plaintiff alleges as follows: Plaintiff's husband, Prentis Cobb Hale, Sr., died testate on November 21, 1936. [2] Thereafter on January 4, 1937 in proceedings duly taken and had in the Superior Court of the State of California, in and for the City and County of San Francisco and numbered 74,152 in the Probate Department thereof, the last will and testament of said Prentis Cobb Hale, Sr. was admitted to probate and as executors thereof, there were appointed A. P. Giannini, Prentis Cobb Hale, Jr., the son of plaintiff, and plaintiff herein. Subsequent to her appointment as one of the executors of the estate of Prentis Cobb Hale, Sr., Deceased, plaintiff asserted a right to a substantial share of the estate of Prentis Cobb Hale, Sr. upon the ground that she, the said plaintiff, had a community interest in a large portion of said decedent's estate. The said community property claim of plaintiff was settled and compromised by the transfer to plaintiff of certain real

property, certain shares of stock and dividends on said shares in the amount of Six Thousand Two Hundred Thirty (\$6,230.00) Dollars, which said last mentioned amount is referred to in Paragraph IV hereof. The transfer to plaintiff of said real property, shares of stock and dividends thereon as herein in this Paragraph V specified was made under and pursuant to the provisions of that certain agreement between plaintiff and Prentis Cobb Hale, Jr. dated June 18, 1937 and referred to in Paragraph IV hereof, which said agreement reads in part as follows on pages 6 and 7 thereof:

“Whereas, the said Linda Hoag Hale claims and asserts that a large portion of the property, purported to be devised and bequeathed by the said Prentis Cobb Hale, Sr. by his said last will and testament, was and is the community property of her said husband, Prentis Cobb Hale, Sr., and herself, and that she, as the surviving wife of her said husband, is entitled, under the laws of the State of California, to one-half of the said property, and the amount and extent of the community property to which the said Linda Hoag Hale is entitled, as aforesaid, have been controverted by the said Prentis Cobb Hale, Jr. in his individual capacity and as executor of the said last will and testament of the said Prentis Cobb Hale, Sr.; and

“Whereas, the said Linda Hoag Hale and the said Prentis Cobb Hale, Jr., desire to compromise and [3] settle the said controversy without litigation, and to that end desire to establish the

fair net value of the said community property at the time of the death of the said Prentis Cobb Hale, Sr.;"

VI.

In addition to the sum of Six Thousand Two Hundred Thirty (\$6,230.00) Dollars referred to in Paragraphs IV and V hereof, plaintiff erroneously and improperly included in the gross income reported by plaintiff on her United States Treasury Department Form 1040, Individual Income Tax Return, for the calendar year 1937 an amount of Five Thousand Four Hundred Fifty (\$5,450.00) Dollars. Said last mentioned sum of Five Thousand Four Hundred Fifty (\$5,450.00) Dollars represents dividends on shares of stock of Hale Bros. Stores, Inc. and Hale Real Estate Company received by the estate of Prentis Cobb Hale, Sr., Deceased, during the period intervening between the death of said Prentis Cobb Hale, Sr. and the distribution of the shares of said Hale Bros. Stores, Inc. and the shares of said Hale Real Estate Company to the trustees named in a testamentary trust created pursuant to the thirteenth paragraph of the last will and testament of the said Prentis Cobb Hale, Sr. Said testamentary trust created by the last will and testament of said Prentis Cobb Hale, Sr. was not a trust for maintenance and did not provide that the income from said trust should be paid to plaintiff from and after the date of death of said Prentis Cobb Hale, Sr. The amount of Five Thousand Four Hundred Fifty (\$5,450.00) Dollars, although paid to plaintiff constituted gross income of the state of Prentis Cobb Hale, Sr. which

was received during the period of administration of said estate, and neither said sum of Five Thousand Four Hundred Fifty (\$5,450.00) Dollars nor any part thereof constituted gross income of plaintiff subject to tax under the Revenue Act of 1936, enacted June 22, 1936 (49 Stat. 1648) as amended by the Revenue Act of 1937 (50 Stat. 813). [4]

VII.

On or about the 8th day of March, 1941, plaintiff duly and regularly and in the manner provided by law filed with defendant her verified claim for refund of Three Thousand Seven Hundred Fifty Seven and 93/100 (\$3,757.93) Dollars representing the amount of Federal income tax heretofore paid to defendant with respect to said amounts of Six Thousand Two Hundred Thirty (\$6,230.00) Dollars and Five Thousand Four Hundred Fifty (\$5,450.00) Dollars erroneously and improperly included in plaintiff's gross income for the calendar year 1937.

VIII.

On or about November 12, 1941, the Commissioner of Internal Revenue of the United States rejected said verified claim for refund heretofore filed by plaintiff and refused to refund to plaintiff said Three Thousand Seven Hundred Fifty-Seven and 93/100 (3,757.93) Dollars or any part thereof, and neither said sum of Three Thousand Seven Hundred Fifty Seven and 93/100 (\$3,757.93) Dollars nor any part thereof nor interest thereon has been repaid to plaintiff or otherwise credited to plaintiff.

Wherefore, Plaintiff prays judgment against defendant for the sum of Three Thousand Seven Hundred Fifty Seven and 93/100 (\$3,757.93) Dollars, together with interest thereon as provided by law, for plaintiff's costs of suit incurred herein, and for such other relief as may be meet and proper in the premises.

Dated this 20th day of October, 1942.

L. W. WRIXON

Attorney for Plaintiff. [5]

(Duly Verified Oct. 20, 1942, by Linda H. Hale.)

[Endorsed]: Filed Oct. 22—1942. [6]

[Title of District Court and Cause.]

ANSWER

Now comes the defendant, appearing by Frank J. Hennessy, United States Attorney for the Northern District of California, and answers the complaint as follows:

I.

Admits the allegations of Paragraphs I, II and III of the complaint.

II.

Answering Paragraph IV of the complaint, defendant admits that in plaintiff's 1937 return, she included as taxable income the sum of \$6,230.00 received by her pursuant to the terms of the agreement referred to in Paragraph IV of the com-

plaint. Denies all the remaining allegations of Paragraph [7] IV of the complaint.

III.

Admits the allegations of Paragraph V of the complaint.

IV.

Answering Paragraph VI, defendant denies the allegation that inclusion of the income paid by the trustees of the Estate of Prentis Cobb Hale, Senior, in her tax return was erroneous or improper. Denies the allegation that said income (\$5,450.00) was income of the said estate. Denies the allegation that said money did not constitute part of the gross income of the plaintiff. Admits the remaining allegations of fact in said paragraph. In so far as said Paragraph alleges conclusions of law, defendant neither admits nor denies them.

V.

Answering Paragraph VII, defendant denies that plaintiff's inclusion of said items in her tax return as gross income was erroneous or improper. Admits that plaintiff filed a claim for refund in the sum of \$3,757.93, as alleged in Paragraph VII.

VI.

Admits the allegations of Paragraph VIII of the complaint.

Wherefore defendant prays that judgment may be entered in his favor, for his costs, and for such other relief as may be just.

FRANK J. HENNESSY
 United States Attorney,
 ESTHER B. PHILLIPS
 Assistant United States
 Attorney

Receipt of Service.

[Endorsed]: Filed, Dec. 19, 1942. [8]

[Title of District Court and Cause.]

L. W. WRIXON

Merchants Exchange Building
 San Francisco, California
 Attorney for Plaintiff

FRANK J. HENNESSY

United States Attorney

ESTHER B. PHILLIPS

Assistant United States Attorney
 Post Office Building
 San Francisco, California
 Attorneys for Defendant

OPINION

St. Sure, District Judge:

Plaintiff sues to recover \$3,757.93 which she

claims she erroneously paid to defendant Collector as income [9] tax for 1937. In her tax return plaintiff reported the sums of \$6,230 and \$5,450, representing dividends on stocks distributed to her upon a compromise agreement under the order of the State probate court, and by the trustee of a testamentary trust respectively. The questions for decision are (1) whether the sum of \$6,230, received as dividends by plaintiff, is exempt from taxation under §22(b)(3) of the Revenue Act of 1936, and (2) whether the sum of \$5,450, also received as dividends, constitutes a taxable distribution from a testamentary trust.

Plaintiff is the widow of Prentis Cobb Hale, Sr. who died testate in San Francisco on November 21, 1936. He left surviving him his widow and their only child, Prentis Cobb Hale, Jr. Decedent's estate consisted of real and personal property of the value of about \$2,000,000. His will was admitted to probate and plaintiff was appointed executrix and Prentis Cobb Hale Jr. and A. P. Giannini were appointed executors and each qualified as such. Testator declared that he believed that all of the property he owned was his separate property, but provided that if any of his property should be found to be community property, "and if my said wife shall elect to take any portion thereof under the community laws of the state, then I direct that the property and estate hereinafter set apart in trust for her use during her lifetime be reduced in amount by the appraised

value of the community property and estate which she shall elect to take.”

Article thirteenth of decedent's will created a trust, the net income from which was to be paid to plaintiff during the term of her natural life with remainder over to [10] decedent's and plaintiff's son, Prentis Cobb Hale, Jr. upon the death of plaintiff. The following described property was designated by article thirteenth to be held in trust:

(1) Home at 2430 Vallejo Street, San Francisco, California; (2) building at 2436 Vallejo Street, San Francisco, California; (3) a farm near Woodside, San Mateo, California; (4) a 2-acre tract of land at Shasta Springs, California; (5) 18,000 shares of capital stock of Hale Bros. Stores, Inc.; (6) 200 shares of capital stock of Hale Real Estate Company; (7) 200 shares of the capital stock of First National Bank of San Jose. (This stock was disposed of by decedent prior to his death.); (8) 8,000 shares of capital stock of Trans-america Corporation.

Plaintiff was dissatisfied with the terms of the will, asserting that a large portion of the property of the estate devised and bequeathed in trust by her late husband was property in which she had a community interest under the laws of California. A controversy about the matter between plaintiff and her son resulted in a compromise agreement, determining that the value of the community exceeded the sum of \$680,000 and that the fair market value of one-half thereof to which plaintiff was entitled was in excess of \$340,000.

As a result of the compromise agreement, dated June 18, 1937, only a portion of the property of the estate remained a part of the testamentary trust created by article thirteenth of the will. The property devised and bequeathed to the testamentary trust actually was distributed as follows:

To plaintiff under the terms of the compromise [11] agreement: All of the real property referred to in Article Thirteenth; 8,000 shares of Hale Bros. Stores, Inc.; 2,000 shares of Transamerica Corporation; 150 shares of Hale Real Estate Company.

To Prentis Cobb Hale, Jr. as residuary legatee: 6,000 shares of Transamerica Corporation.

To the testamentary trustee under the trust created by article thirteenth of decedent's will: 10,000 shares of Hale Bros. Stores, Inc.; 50 shares of Hale Real Estate Company.

The income under discussion here is in two items. The first relates to the sum of \$6,230 representing dividends collected on 6,000 shares of Hale Bros. Stores, Inc., 2,000 shares of Transamerica Corporation and 150 shares of Hale Real Estate Company. The stock of this item is a portion of the stock described in article thirteenth which testator sought to dispose of therein. The dividends amounting to \$6,230 were collected by the executors of the estate and credited to the trust. Both the stock and the income were later distributed to plaintiff by virtue of the trust and the compromise agreement.

The executors did not pay the income tax on these dividends which they included in their tax returns

for 1937, but they took a deduction, pursuant to 162(c) of the Revenue Act of 1936, which reads as follows:

“In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the [12] estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir or beneficiary.”

The second item relates to the sum of \$5,450, representing dividends collected on 10,000 shares of Hale Bros. Stores, Inc., and 50 shares of Hale Real Estate Company. This stock is what remained of the property in the testamentary trust after plaintiff, through the compromise agreement, had carved out her share of the community. The income from this stock, in the amount named, had likewise been collected by the executors and credited to the trust. The income was distributed directly to plaintiff under the provisions of §162(c) of the Revenue Act of 1936, *supra*, and consequently no income tax was paid upon it by decedent's estate. The payment was “allowed as an additional deduc-

tion in computing the net income of the estate or trust" for the taxable year.

As to the first item of \$6,230, representing dividends received, plaintiff contends that it is exempt from taxation under the provisions of §22(b)(3) of the Revenue Act of 1936 which provides in part:

"The following items shall not be included in the gross income and shall be exempt from taxation:

"Gifts, bequests, and devises. The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income)."

Plaintiff further contends that the sum of \$6,230 "represents an integral part of the total settlement in lieu of her claimed community interest and no distinction can be [13] drawn between the principal portion of the settlement relating to real estate and securities and the accumulated dividends thereon under the principle established in *Lyeth v. Hoey*, 59 S. Ct. 155; 305 U. S. 188; 83 L. ed. 119."

It should be kept in mind that we are here concerned only with dividends from shares of stock, which was income paid to plaintiff after her husband's death, following the probate of his will. All of the stock from which the income was derived was bequeathed in trust to a trustee for the use and benefit of plaintiff during her natural life. Upon the death of testator and the proof of the will the title to the stock was in the testamentary trustee subject to administration of the estate.

The income derived from property held in trust relates back to the date of testator's death. Its status is fixed at that time, and the beneficiary is entitled to income derived from the specific property placed in trust. *McCaughn v. Girard Trust Co.*, 19 F. (2d) 218, *Estate of White*, 41 Bd. of Tax App. 525 and *Estate of Fox*, 31 Bd. of Tax App. 1181. A specific bequest carries with it all accessions by way of dividends or interest that may accrue after the death of the testator. *Estate of Daly*, 202 Cal. 284, 287; 69 C. J. pages 401, 402, 1151, 1153. It is immaterial whether the dividends came from stock which originally was part of decedent's estate, or from stock accepted in lieu of a claimed community interest under a compromise agreement. After the admission of the will to probate, under the compromise agreement, plaintiff had released from [14] the terms of the trust to herself in her individual capacity, certain property, a portion of which was income-producing stock here involved. In this instance she got both the stock and the income derived from it.

Plaintiff cites *Lyeth v. Hoey*, supra, as supporting her contention that the dividends she received were not taxable, but an examination of that case shows the facts are different from those in the present case. There the heir, by threatened litigation and compromise agreement secured a settlement and distribution to him of property valued at \$141,484.63, which was part of decedent's estate and was included in the estate's tax return. After the heir received the property the Commissioner

of Internal Revenue treated the whole amount of value as income for the year in which it was received and levied an additional tax of \$56,389.65. The court held that this was illegal; that what the petitioner "got from the estate came to him because he was heir, the compromise serving to remove pro tanto the impediment to his inheritance," and that the exemption applied.

The rule of *Lyeth v. Hoey* would apply here if the Commissioner had treated the whole of the property distributed to plaintiff in 1937, valued at \$340,000, as income. But that he did not do. The property was part of decedent's estate upon which an inheritance tax was assessed and paid. Income or earnings from the property of the decedent's estate were not subject to an inheritance tax but to an income tax.

It seems clear to me that the dividends received by plaintiff from the stock of which she became the owner [15] following her husband's death, either through compromise agreement followed by decree of distribution, or through testamentary trust, are taxable as income. Cf. *Rosenberg v. Commissioner*, 115 F. (2d) 910.

Plaintiff did not receive the dividends by gift or bequest or devise or inheritance (§22(b)(3) of Revenue Act of 1936), but she received them as income from property which had been distributed to her in the manner hereinbefore stated.

Plaintiff takes an equivocal position as to the second item of \$5,450, representing dividends from stock remaining in the testamentary trust, which

dividends were paid by the trustee to plaintiff during the taxable year. She states that she was not entitled to receive these dividends under Estate of Brown, 143 Cal. 450, and Claves v. Nutter, 49 Cal. App. 148, and that the fact that she did receive \$5,450 does not render it taxable to her under the decision in Freuler v. Helvering, 291 U. S. 35.

What has been said under item one as to the status of trust property and income therefrom also applies here. The trustee made payment of the income to plaintiff as authorized by §162(c) of the Revenue Act of 1936, supra. The cases cited are not in point and plaintiff's position is untenable.

Judgment will be in favor of defendant with costs.

April 27, 1943

[Endorsed]: Filed Apr. 28, 1943. [16]

[Title of District Court and Cause.]

ORDER FOR JUDGMENT AND SUBMISSION
OF FINDINGS OF FACT AND CONCLU-
SIONS OF LAW

Ordered:

That plaintiff take nothing by her action and that defendant have judgment for his costs.

Attorney for defendant may submit findings of

fact and conclusions of law in accordance with the opinion this day filed.

Dated: April 27, 1943.

A. F. ST. SURE

United States District Judge

[Endorsed]: Filed Apr 28, 1943. [17]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above entitled case coming regularly on for trial on February 9, 1943, before the above entitled Court, the Honorable A. F. St. Sure, presiding, the plaintiff appearing by L. W. Wrixon, the defendant appearing by Frank J. Hennessy, United States Attorney for the Northern District of California, and Esther B. Phillips, Assistant United States Attorney, jury having been waived, and the Court having considered the pleadings, the exhibits and the testimony, and the cause having been submitted upon briefs, and the Court having considered the facts, the law and the arguments of counsel, and having rendered his opinion thereon, now makes the following [18]

FINDINGS OF FACT

I.

That at all times herein mentioned, Clifford C. Anglim, was the duly qualified, appointed and act-

ing Collector of Internal Revenue for the First District of California, and at all times mentioned was and is a citizen of the United States and a resident of the State and Northern District of California.

That at all times mentioned herein the plaintiff was and now is a resident of the City and County of San Francisco, State and Northern District of California.

II.

On March 14, 1938, the plaintiff filed with the defendant her income tax return for the year 1937. Said return reflected a net taxable income in the sum of \$57,016.73 and an income tax thereon in the sum of \$11,794.53. The plaintiff duly paid to the defendant in three installments during the year 1938 all of the tax shown to be due in said return.

III.

On or about March 8, 1941, plaintiff duly filed with the defendant her claim for refund of income taxes in the sum of \$3,757.93, which plaintiff claimed represented the amount of income tax paid to the defendant upon certain items of income which she claimed to have been erroneously included in her income tax return for the year 1937. On November 12, 1941, the Commissioner of Internal Revenue rejected said claim for refund and refused to refund said tax of \$3,757.93, or any part thereof. No part of said taxes has been refunded or otherwise credited to the plaintiff.

IV.

The items of income which plaintiff included in her income tax return for the year 1937, and which she claims [19] ought not to have been included in said return, were dividends amounting to \$6,230.00 and \$5,450.00 which were paid on stocks owned by her deceased husband at the date of his death, and which accrued and were paid after his death, under the circumstances hereinafter set forth.

V.

Plaintiff is the widow of Prentis Cobb Hale, Senior, who died November 18, 1936, leaving an estate subject to federal estate taxes of the approximate value of \$2,000,000.00. In addition to legacies not involved herein, he made his son the residuary legatee and left his wife the income from a trust established by Clause 13 of his will. In Clause 13, he bequeathed to the Bank of America, as trustee, certain houses and furnishings in San Francisco and certain parcels of real property situated in other parts of California, and, in addition, 18,000 shares of capital stock of Hale Bros. Stores, Inc., 200 shares of capital stock of Hale Real Estate Company, and 8,000 shares of capital stock of Transamerica Corporation. Said trustee was to hold the trust estate for the benefit of the plaintiff and to pay the income therefrom during her life and on her death the trust estate was to be distributed to her son, Prentis Cobb Hale, Jr., who was also the residuary legatee of the estate. All

of said property was included in the estate tax return of the estate for estate tax purposes.

Plaintiff was dissatisfied with the terms of the will and asserted that a portion of the property of the estate devised by her husband was property in which she had a community interest under the laws of the State of California. A controversy about the matter between the plaintiff and her son resulted in a compromise agreement between them by which it was agreed that plaintiff had a community interest in property of her deceased husband amounting to more than \$680,000 and that the fair market value of one-half thereof to which plaintiff was entitled exceeded \$340,000. The [20] decedent's will directed that in the event that plaintiff asserted a claim to a community interest in his property, the value of her community interest should be taken from the property bequeathed by Clause 13 of his will.

As a result of said compromise agreement and said provisions in the will, there was distributed to the plaintiff all of said real property and furnishings referred to in Clause 13, and 8,000 shares of Hale Bros. Stores, Inc., 2,000 shares of Transamerica Corporation and 150 shares of Hale Real Estate Company, and there was distributed to the residue of the estate 6,000 shares of Transamerica Corporation. As a result of this agreement the testamentary trust created in Clause 13 received in trust only 10,000 shares of Hale Bros. Stores, Inc. and 50 shares of Hale Real Estate Company. A decree of distribution was entered on July 14, 1937,

distributing to the plaintiff the above described properties, and a decree of distribution was entered on July 29, 1937, distributing to the trustee said trust properties.

VI.

Previous to the distribution made on July 14, 1937, dividends amounting to \$6,230.00 accrued between the death of the decedent and July 14, 1937 upon said stocks distributed to Mrs. Hale. These dividends were paid from time to time to the executors of the estate by the issuing corporations and the executors credited them to the trust up to July 14, 1937. Thereafter the executors distributed these dividends to the plaintiff pursuant to a partial decree of distribution and pursuant to the compromise agreement referred to above.

VII.

Previous to the distribution to the trustee on July 29, 1937, dividends accrued upon those shares of stocks which were distributed to the testamentary trust in the amount of \$5,450.00. Said dividends accrued between the date of death [21] and July 29, 1937, when the Bank of America became the distributee of the shares of stock as trustee. The executors had received these dividends from time to time and had credited them to the trust. They were thereafter paid to the plaintiff who, by the terms of Clause 13 of the will, was entitled to receive all income from the trust property during her lifetime.

VII.

The executors in their income tax return for

the estate reported all of these dividends, but deducted them as having been properly distributed to the beneficiary entitled to receive them. The plaintiff included all of these dividends in her tax return and paid the taxes on them. These are the taxes which she now seeks to recover.

From the foregoing facts the Court makes the following

CONCLUSIONS OF LAW

(1) That the executors of the estate and the fiduciary (the trustee) were, under the terms of the will, authorized to credit and to distribute both items of income in question to the beneficiary of the trust, the plaintiff.

(2) That the executors were entitled to deduct from the income tax return of the estate these dividends so credited and paid, and were not required to pay the income taxes upon them.

(3) That the plaintiff, being the beneficiary and the person properly receiving said dividends, was required by the provisions of Section 162(c) of the Revenue Act of 1936, to return the dividends as a part of her income and to pay the taxes upon them.

Let judgment be entered for the defendant, with costs as may be taxed.

A. F. ST. SURE

United States District Judge.

Dated: May 10, 1943

[Endorsed]: Filed May 10, 1943. [22]

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 22344-S

LINDA H. HALE,

Plaintiff,

vs.

CLIFFORD C. ANGLIM, individually and as Col-
lector of Internal Revenue for the First District
of California,

Defendant.

JUDGMENT

This cause having come regularly on for trial
and the Court having rendered his opinion upon
the evidence and having made Findings of Fact
and Conclusions of Law,

Now, Therefore, it is Hereby Ordered, Adjudged
and Decreed that the plaintiff recover nothing by
her complaint and that the defendant recover costs
as may be taxed.

Dated: May 12, 1943.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed May 13, 1943. [23]

[Title of District Court and Cause.]

TESTIMONY

Thursday, February 9, 1943

Appearances:

L. W. Wrixon, Esq.,
Attorney for the plaintiff;

Miss Esther B. Phillips,
Assistant United States Attorney,
for the defendant.

Mr. Wrixon: If your Honor please, this is a proceeding involving the Federal income tax liability of the plaintiff. Practically all of the evidence will be documentary in form, but in order to state a little of the background I will state some of the pertinent facts.

The plaintiff in this proceeding is the surviving wife of Prentiss Cobb Hale, Sr. Mr. Hale passed away on November 21, 1936. He died testate in the City and County of San Francisco and his will was probated in San Francisco. By Article 13 of his will he created a testamentary trust, the life income to go to the plaintiff, and the remainder to his son. The will also gave [26] certain relatively small bequests to the plaintiff. The will was offered for probate and the plaintiff asserted a community interest in the property of the decedent's estate. A compromise agreement was entered into between the plaintiff and her son, Prentiss Cobb Hale, Jr. This agreement resulted in the transfer to the plaintiff of a considerable fortune of the

trust property that would otherwise have become a part of the testamentary trust pursuant to Article 13 of his will. The agreement also provides that the income from the property distributed to Mrs. Hale for a period of time commencing from the date of his death to the date of distribution be also distributed to the plaintiff.

The plaintiff, in addition to the property and the income to which I have just referred, also received income from the remaining portion of the property which was distributed to the trustee under the testamentary trust.

There are two problems in this case, one relating to the taxability of the amount received by the plaintiff under the property settlement agreement, relating to the income on the securities which were given to her by the agreement, and the other question is relative to the taxability of the amount received by the plaintiff from the income on the property which did go into the testamentary trust.

The plaintiff contends that the income paid to her under the property settlement agreement is not income under Section 22 of the Revenue Act of 1936, but is income arising out of property acquired by inheritance. And the plaintiff contends that the other amount, \$5,450, received by her, arising out of income of the property that did go into the trust, is not taxable to her by reason of the decisions of the Supreme Court and Appellate Court of the State of California relating to income received by a [27] trustee upon property distributed under the testamentary trust.

The Court: As I understand, the husband died testate; and he left certain property to the widow, and he left certain property to the son. The property left to the son was in trust.

Mr. Wrixon: In trust as to the remainder, under Article 13 of his will, and the son was also the residual legatee under the will.

The Court: Then thereafter the son transferred, by virtue of an agreement, the trust property to his mother.

Mr. Wrixon: A portion of it.

The Court: A portion of the trust property to his mother, and the income therefrom.

Mr. Wrixon: The income accruing from the date of January 1, 1937, to the date of the agreement.

The Court: Was it a gift from the son to the mother?

Mr. Wrixon: No, your Honor; it was taken by the plaintiff and transferred from the estate of Prentiss Cobb Hale in settlement of her claim of the community interest in the estate of her husband.

The Court: As I understand it, the property did not go to the widow by reason of any provision of the will or any provision of the law, did it?

Mr. Wrixon: That is our contention, your Honor.

The Court: That it did?

Mr. Wrixon: That it did not go to the widow by reason of any provision of the will, but rather went

to her solely as a compromise of her asserted community interest in the estate.

The Court: The balance of the matter has to do with income on the remaining portion of the present estate received by the widow? [28]

Mr. Wrixon: Yes, your Honor, on the remaining portion of the present estate, consisting of 10,000 shares of Hale Bros. Stores, Inc., and 50 shares of Hale Real Estate Company. Those two blocks of securities did go into the testamentary trust, and certain income was received by the estate during the period from the date of his death to the date the securities were distributed to the trustee. That income amounted to \$5,450 and was ultimately paid to the plaintiff.

It is our contention under the decisions in California with respect to income accruing prior to the date property is distributed to a testamentary trustee that it is not taxable as income of life tenancy.

The Court: Aren't you bound by the Federal law in that regard?

Mr. Wrixon: It is our contention, your Honor, that the law of California governs in that respect, in that it determines to whom income shall be paid during that period.

The Court: Very well.

Miss Phillips: Counsel has stated the two items in controversy correctly; that is, the first concerns dividends which were paid upon shares of stock which the plaintiff received pursuant to her claim that part of the estate of her deceased husband was community property. We have a situation here

where, as the records will show, the deceased left about a two million dollar estate; his wife and he had been married for more than 30 years. His will, which will be placed in evidence, left her an outright gift of some \$10,000 and the income for life upon a testamentary trust, in addition to leaving her a home and some things like that. Thereafter the will was probated. The plaintiff contended part of the property in the estate was really community property, of which [28a] part was hers and was not subject to be left by her husband.

The son and she had a dispute. They finally reached a conclusion that in the two million dollar estate, approximately \$680,000 was, in fact, community property, of which \$340,000 would be hers under the laws of California.

There was a dispute, but at the same time, pursuant to the agreement, and pursuant to the recognition by the son of the fact that part of the estate was community property, it was agreed that \$340,000 of the property in the estate should go to the wife and mother as her community property; that pursuant to this agreement a block of stock was transferred to her and did not go into the estate for probate purposes. It became hers.

Now, in this block of property of approximately \$340,000, there were shares of stock on which dividends became payable and which plaintiff received. This is the fruit, you might say.

The Court: Who shall pay the tax on that income?

Miss Phillips: Who shall pay the tax on that

income? The estate did not get the income; the estate did not pay the income tax. The plaintiff got the fruit. Which shall pay the tax on it?

The second item is the block of stock which went into the testamentary trust, which the will sets up, which would be held for the lifetime of the plaintiff, and upon her death the testamentary trust would become the son's property.

On this block of stock in the testamentary trust dividends of \$5,450 were paid into the trust. The fiduciary turned that money over to Mrs. Hale.

Now, your Honor, she returned this as her income and thereafter filed a claim for refund, and says, "This is not taxable to me." But who should pay the tax on it? If the plaintiff did not pay the tax on it, then, of course, the trustee of the estate, or [29] executors, of whom plaintiff herself was one, owe the tax. Somebody has to pay the tax on it. Should it have been her, as beneficiary of the trust, or should it have been the trustee? Who should pay the tax on it?

The Court: You say the widow got it?

Miss Phillips: The widow got it as income as beneficiary of this testamentary trust. We claim that it was properly taxable to her under the statutory provisions and under the regulations. Somebody has to pay the tax. Either she must pay it, or the estate must pay it.

The Court: I do not suppose she claims the trustee should pay it?

Miss Phillips: If she does not pay it, the trus-

tees pay it; one or the other must pay it. Those are the only two questions in controversy.

As counsel stated, the proof is almost wholly documentary evidence. It is a matter of construction, your Honor.

The Court: Very well.

Mr. Wrixon: If your Honor please, I would like to offer in evidence certain documents which have been submitted to counsel, and I will ask that they be considered as read.

The Court: Very well.

Mr. Wrixon: I will offer in evidence a copy of a claim for refund filed by the plaintiff, asking for a refund of \$3,757.93, applicable to the taxable year 1937.

Miss Phillips: No objection.

The Court: It may be admitted and marked.

(The document referred to was marked Plaintiff's Exhibit No. 1 in evidence.)

PLAINTIFF'S EXHIBIT No. 1

CLAIM

To Be Filed with the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

- [] Refund of Tax Illegally Collected.
- [] Refund of Amount Paid for Stamps Un-
used, or Used in Error or Excess.

[] Abatement of Tax Assessed (not applicable to estate or income taxes).

Collector's Stamp
(Date Received)

State of California

City and County of San Francisco—ss:

[Type or Print]

Name of taxpayer or purchaser of stamps—Mrs.
Linda H. Hale

Business address
(Street) (City) (State)

Residence—2430 Vallejo street San Francisco California

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed—
First California

2. Period (if for income tax, make separate form for each taxable year) from Jan. 1., 1937, to Dec. 31, 1937

3. Character of assessment or tax—individual income tax

4. Amount of assessment, \$11,794.53; dates of payment (3-14-38 \$2,948.64; 6-7-38 \$2,948.64;)

5. Date stamps were purchased from the Government (9-1-38 \$5,897.25)

6. Amount to be refunded Three Thousand Seven Hundred Fifty-seven and 93/100 \$3,757.93

7. Amount to be abated (not applicable to income or estate taxes) \$.....

8. The time within which this claim may be legally filed expires, under Section 322 I.R.C., on March 15, 1941

The deponent verily believes that this claim should be allowed for the following reasons:

Reasons are stated by the memorandum (4 pages) which is attached hereto and made a part hereof.

This claim has been prepared by me, and the statements made therein I either know to be true, or are based upon facts of which I have been informed and believe to be true.

(Signed) L. M. WRIXON

L. W. Wrixon

(1) Linda H. Hale, hereinafter referred to as Taxpayer, is the surviving wife of Prentis Cobb Hale, Sr., and one of the 3 executors of his last will and testament. Mr. Hale died on November 21, 1936. His estate is still being probated in San Francisco under proceeding #74,152.

(2) Mr. Hale declared in his will that he believed all of his property was his separate property. He left to Taxpayer, without qualification, \$10,000.00 and all automobiles which he might own. He also created a trust in his will involving certain real estate and securities, the income of said trust to be paid to Taxpayer during her lifetime and

upon her death the principal balance was then to be paid to their son, Prentis Cobb Hale, Jr.

(3) (a) Taxpayer contested the contention of her husband regarding the separate character of his property, and as a result a compromise agreement was entered into between Taxpayer and her son on June 18, 1937, the purpose of this agreement being to settle amicably and without litigation their conflicting claims. Under the terms of this agreement Taxpayer was entitled to receive outright from the trust property certain real estate and the following securities:

8,000 Shs. Hale Bros. Stores, Inc.
2,000 Shs. Transamerica
150 Shs. Hale Real Estate Company
1,220 Shs. Hale Bros. Realty

(b) After the foregoing securities were released, together with other securities distributable to Taxpayer's son, there remained in the trust created by Mr. Hale, Sr., the following securities:

10,000 Shs. Hale Bros. Stores Inc.
50 Shs. Hale Real Estate Company

(4) Article 8 of the agreement dated June 18, 1937 specifically provided that all dividends therefore declared on the above mentioned shares released to Mrs. Hale (paragraph 3(a) above) should also be paid to Taxpayer as a part of the settlement. Accordingly, dividends aggregating \$6,230.00 which had been received by the Estate of Prentis Cobb Hale, Sr. on the securities to be re-

leased to Taxpayer were paid over to Taxpayer by the estate in 1937 and were reported by Taxpayer on line 7 of her return for the year 1937. An analysis of these dividends follows:

On 8,000 Shs. Hale Bros. Stores, Inc.:	
March 1, 1937, 25c per sh.....	\$2,000.00
June 1, 1937 do	2,000.00
On 2,000 Shs. Transamerica Corpn.:	
Feb. 1, 1937, 20c per sh.—cash	400.00
40 Shs. Bancamerica Blair Co. stock, at \$12.00 per sh.	480.00
On 150 Shs. Hale Real Estate Co.:	
Jan. 2, 1937, \$3.00 per sh.....	450.00
Mar. 24, 1937 do	450.00
June 21, 1937 do	450.00
 Total	 \$6,230.00

(6) In addition to dividends in amount of \$6,230.00 referred to in Paragraph (4) taxpayer also received in 1937 pursuant to a decree of ratable distribution dated December 22, 1937 the sum of \$5,450.00 representing dividends which had accrued upon the shares of stock referred to in paragraph (3)(b) hereof which remained in the trust created by Mr. Hale in his will. These securities were distributed to trustees on or about said date of July 29, 1937. An analysis of the dividends comprising the sum of \$5,450.00 is as follows:

10,000 Shs. Hale Bros. Stores, Inc.	
March 1, 1937 25c	\$2,500.00
June 1, 1937 25c	2,500.00
50 Shs. Hale Real Estate Company.....	450.00
 Total	 5,450.00

Taxpayer repeats and reaffirms the argument presented above in subdivision (c) of Paragraph 5 with respect to the dividends amounting to \$5,450.00 and contends that this amount which has been reported by Taxpayer (line 7—Income from Fiduciaries, in the year 1937) should be excluded from taxable income for the reasons hereinabove mentioned in Paragraph (5)(c).

[Endorsed]: Filed 2/9/43.

Mr. Wrixon: I also offer in evidence a photostatic copy of an [30] agreement dated June 18, 1937, between Linda Hoag Hale, in her individual capacity and as executrix of the last will and testament of Prentiss Cobb Hale, Sr., and Prentiss Cobb Hale, Jr., in his individual capacity and as executor of the last will and testament of Prentiss Cobb Hale, Sr.

Miss Phillips: No objection.

(The document referred to was marked Plaintiff's Exhibit No. 2 in evidence.)

PLAINTIFF'S EXHIBIT No. 2

This Agreement, made and entered into this 18th day of June, 1937, by and between Linda Hoag Hale, (sometimes also known as Linda H. Hale), in her individual capacity and as executrix of the last will and testament of Prentis Cobb Hale, Sr., deceased, the party of the first part, and Prentis Cobb Hale, Jr., (sometimes also known

as Prentis C. Hale, Jr.), in his individual capacity and as executor of the last will and testament of the said Prentis Cobb Hale, Sr., deceased, the party of the second part,

“Seventeenth: I have heretofore created and declared an irrevocable trust of which Bank of Italy National Trust and Savings Association is now the Trustee, in which I have placed 8716 shares of the capital stock of Hale Bros. Stores, Inc. and 3970 shares of the capital stock of Hale Bros. Realty Co., to be held for the use and benefit of my wife, Linda Hoag Hale, during her lifetime, and for the use of my son, Prentis Cobb Hale, Jr., after her death, and I hereby ratify and approve said trust in each and every particular”;

and Bank of Italy National Trust and Savings Association, so named in the said paragraph “Seventeenth”, is now known and is the same as the said Bank of America National Trust and Savings Association, to wit, the trustee of the trusts declare in and by the said paragraph “Thirteenth” of the said last will and testament; and

Whereas, the said Linda Hoag Hale and the said Prentis Cobb Hale, Jr., desire to compromise and settle the said controversy without litigation, and to that end desire to establish the fair net value of the said community property at the time of the death of the said Prentis Cobb Hale, Sr.; and

Whereas, the said Linda Hoag Hale and the said Prentis Cobb Hale, Jr., have examined, and have caused to be examined, the books and records of the said Prentis Cobb Hale, Sr., and have ascer-

tained and determined, from such examination, that the fair net value of the said community property at the time of the death of the said Prentis Cobb Hale, Sr. is not less than and greatly exceeds the sum of \$680,000, and, therefore, that the fair net value of the one-half interest therein to which the said Linda Hoag Hale is entitled under the laws of the State of California, as the surviving wife of the said Prentis Cobb Hale, Sr., is not less than and greatly exceeds the sum of \$340,000;

Now, Therefore, This Agreement Further Witnesseth:

That, for the purpose of compromising and settling, without litigation, the said controversy between the said Linda Hoag Hale and the said Prentis Cobb Hale, Jr., and to that end of establishing the fair net value of the said community property at the time of the death of the said Prentis Cobb Hale, Sr., and in consideration thereof, and in further consideration of the covenants and agreements hereinafter in this agreement contained on the part of the said Linda Hoag Hale, in her individual capacity and as executrix aforesaid, and of the said Prentis Cobb Hale, Jr., in his individual capacity and as executor aforesaid, respectively, to be performed, the said Linda Hoag Hale, in her individual capacity and as executrix aforesaid, and the said Prentis Cobb Hale, Jr., in his individual capacity and as executor aforesaid, do hereby accept, as so determined, the said sum of \$340,000 as the fair net value, for all purposes of this agreement, of the said one-half interest in the said community prop-

erty at the time of the death of the said Prentis Cobb Hale, Sr., to which the said Linda Hoag Hale is entitled under the laws of the State of California, as the surviving wife of the said Prentis Cobb Hale, Sr., and the said Linda Hoag Hale, in her individual capacity and as executrix aforesaid, and the said Prentis Cobb Hale, Jr., in his individual capacity and as executor aforesaid, do hereby respectively covenant and agree as follows:

1. There shall be released to the said Linda Hoag Hale, in her individual capacity, from the provisions of the said paragraph "Thirteenth" of the said last will and testament, and, therefore, from the trust estate created in and by those provisions, the following respective items of property, real and personal, at the respective values at which the same will be appraised in the said inventory and appraisal, to wit:

Vallejo Street real property, San Francisco, Cal.,.....	\$ 25,000.00
Woodside real property, San Mateo Co., Cal.,.....	34,672.00
Shasta Springs real property, Siskiyou Co., Cal.,.....	7,000.00
8,000 shares of Hale Bros. Stores, Inc.,.....	176,000.00
2,000 shares of Transamerica Corporation,.....	36,000.00
150 shares of Hale Real Estate Company,.....	43,200.00

Total, \$321,872.00

Forward, \$321,872.00

And to these enumerated items of property there shall be added, from the residue of the estate of the said decedent such number of the shares of Hale Bros. Realty Company, a corporation, as shall equal, at value at which the same shall be appraised in the said inventory and appraisal, the sum of 16,800.00

Total, \$338,672.00

and the said items of property, real and personal, shall be distributed to the said Linda Hoag Hale by the decree of partial distribution, as hereinafter provided, in the said matter of the estate of the said Prentis Cobb Hale, Sr., in satisfaction of the said one-half interest in the said community property to which the said Linda Hoag Hale is entitled as aforesaid.

2. There shall remain in the trust estate created in and by the provisions of the said paragraph "Thirteenth" of the said last will and testament, and subject to the said provisions, the following respective items of property, at the respective values at which the same will be appraised in the said inventory and appraisal as follows, to wit:

10,000 shares of Hale Bros. Stores, Inc.....	\$220,000.00
50 shares of Hale Real Estate Company,.....	14,000.00
	<hr/>
Total,	\$234,000.00

3. There shall also be released from the said trust estate created in and by the provisions of the said paragraph "Thirteenth" of the said last will and testament, the 6,000 shares, remaining after the release, as aforesaid, from the provisions of the said paragraph "Thirteenth", of the said 2,000 shares, of the capital stock of the said Transamerica Corporation, at the value thereof at which the same will be appraised in the said inventory and appraisal, to wit, the sum of \$108,000, and the same shall be and become a part of the residue of the estate of the said decedent, to which the said Prentis Cobb Hale, Jr. is entitled under the pro-

visions of the said paragraph "Fifteenth" of the said last will and testament.

8. All dividends heretofore declared by the respective corporations, or by any thereof, hereinabove in the said paragraph 1 of this agreement named, upon their said shares of capital stock described in the said paragraph 1, or upon any thereof, and heretofore paid to and received by the said executrix and the said executors of the said last will and testament, and all dividends hereafter declared by the said respective corporations, or by any thereof, upon their shares of capital stock described in the said paragraph 1, or upon any thereof, when and as the same shall be paid to and received by the said executrix and the said executors, shall be credited by the said executrix and the said executors on the books of the said executrix and the said executors to the said Linda Hoag Hale, individually, (and the said credits heretofore made on the said books of the said executrix and the said executors as aforesaid shall be changed accordingly), and all items of expenditure, properly made by the said executrix and the said executors for the said Linda Hoag Hale, individually, including all items of expenditure incurred by the said executrix and the said executors for the care, maintenance and protection of the said items of real and personal property referred to in subdivisions 1, 2, 3 and 4, respectively, of the said paragraph "Thirteenth" of the said last will and testament, shall be charged by the said executrix and the said executors to the said Linda

Hoag Hale, individually, and the balance, if any of the said dividends remaining shall be distributed to the said Linda Hoag Hale, individually, by the said decree of final distribution, or by a decree of partial distribution, pursuant to the petition therefore to the said Superior Court in the said matter of the estate of the said Prentis Cobb Hale, Sr., of the said Linda Hoag Hale, as the executrix, and the said A. P. Ginnini and Prentis Cobb Hale, Jr., as the executors, of the said last will and testament.

9. All dividends heretofore declared by the said Transamerica Corporation upon the 6,000 shares of the capital stock of the said Transamerica Corporation, hereinabove in the said paragraph 3 of this agreement referred to, and heretofore paid to and received by the said executrix and the said executors of the said last will and testament, and all dividends hereafter declared by the said Transamerica Corporation upon the said 6,000 shares of the said capital stock of the said Transamerica Corporation, when and as the same shall be paid to and received by the said executrix and the said executors, shall be credited by the said executrix and the said executors on the books of the said executrix and the said executors to the said Prentis Cobb Hale, Jr., individually, and any items of expenditure properly made by the said executrix and the said executors for the said Prentis Cobb Hale, Jr., individually, shall be charged by the said executrix and the said executors to the said Prentis Cobb Hale, Jr., individually, and the balance, if any, of the said dividends shall be distributed to the said Prentis Cobb Hale, Jr., individually, by the said decree of final distribution.

10. The said sum of \$1,500 per month, until the further order of the said Superior Court, allowed by the said Superior Court by its order duly given and made in the said matter of the estate of the said Prentis Cobb Hale, Sr., on the 4th day of January, 1937, retroactively commencing on the date of the death of the said decedent, to wit, on the 21st day of November, 1936, shall terminate and be pro-rated as of the date of the said order and decree of partial distribution to the said Linda Hoag Hale; provided, however, that if the said petition for partial distribution shall not have been heard and determined by the said Superior Court on or before the 20th day of July, 1937, for any reason attributable to the said Linda Hoag Hale, or to her attorneys, the said allowance shall terminate and be pro-rated as of the said 20th day of July, 1937.

[Endorsed]: Filed 2/9/43.

Mr. Wrixon: I also offer in evidence a certified photostatic copy of the last will and testament of Prentiss Cobb Hale, Sr.

Miss Phillips: No objection.

(The document referred to was marked Plaintiff's Exhibit No. 3 in evidence.)

PLAINTIFF'S EXHIBIT No. 3

LAST WILL AND TESTAMENT

Fourth: I believe and declare that all property which I own, or in which I have any interest, is my own separate property, but if any property in which

I may be interested at the time of my death shall be found to be community property, and if my said wife shall elect to take any portion thereof under the community property laws of this State, then I direct that the property and estate hereinafter set apart in trust for her use during her lifetime be reduced in amount by the appraised value of the community property and estate which she shall elect to take.

Fifth: I give and bequeath to my sister, Jennie Hale Fisher, if she survives me, Five Hundred (500) shares of the capital stock of Hale Bros. Stores, Inc., and Two Hundred (200) shares of the capital stock of Transamerica Corporation.

Twelfth: I give and bequeath to my beloved wife, Linda Hoag Hale, if she survive me, to be paid and delivered to her at the earliest possible moment after my death, the sum of Ten Thousand (10,000) Dollars, and all automobiles which I may then own.

Thirteenth: If my said wife, Linda Hoag Hale, survive me, I give, devise and bequeath to Bank of America National Trust and Savings Association, a national banking association, as Trustee, subject to the conditions aforesaid, to be held and administered in trust, for the use and benefit of my said wife during the period of her natural life, and thereafter to be applied to the uses hereinafter mentioned, the following real and personal property, to-wit:

1— My home at No. 2430 Vallejo Street, San Francisco, California, together with the entire lot

and parcel of land upon which it stands, and the furniture, furnishings and personal effects therein contained.

2— The building at No. 2446 Vallejo Street, San Francisco, California, together with the entire lot and parcel of land upon which it stands, and the furniture, furnishings and personal effects therein contained.

3— My farm near Woodside, in the County of San Mateo, State of California, including the buildings and improvements thereon, and all the furniture, furnishings and personal effects thereon and therein contained, including the equipment used in and about the operation of said farm.

4— The 2-acre tract of land owned by me at Shasta Springs, in the County of Siskiyou, State of California, including the buildings thereon, and the furniture, furnishings and personal effects therein contained.

5— Eighteen thousand (18,000) shares of the capital stock of Hale Bros. Stores, Inc., a Delaware corporation.

6— Two hundred (200) shares of the capital stock of Hale Real Estate Company, a California corporation, having its office and principal place of business at Sacramento, California.

7— Two hundred (200) shares of the capital stock of First National Bank of San Jose, a banking corporation.

8— Eight thousand (8,000) shares of the capital stock of Transamerica Corporation, a corpora-

tion organized and existing under the laws of the State of Delaware.

During its continuance the trust shall be administered in the manner, for the uses and purposes and subject to the conditions following, to-wit:

a— If it be the wish of my said wife to occupy, as her home, the house in which we now live, it shall be her right and privilege to do so, and my said Trustee shall permit her to live therein and to have the use of all the furniture, furnishings and personal effects therein contained without the payment of rental or other charge, and shall keep and maintain said property and pay the taxes and expenses of the upkeep thereof out of the income or any other funds in the trust.

b— The net income of the trust fund and estate shall be paid by my said trustee to my said wife during the term of her natural life in such monthly or other installments as shall be found most appropriate; provided, further, that if said income shall at any time be insufficient for the proper support or care of my said wife, or if, by reason of illness, accident or other emergency she shall be in need of additional funds, my said Trustee shall be authorized, in its discretion, to pay to her or to apply for her use from time to time, such portions of the principal of the trust fund and estate as my said Trustee shall deem necessary, and it shall not be competent for any other person, whether or not a beneficiary hereunder or interested in my estate, to object thereto.

c— Upon the death of my said wife, if my son Prentis Cobb Hale, Jr., be then living and over the age of twenty-five (25) years, or if he be then deceased, said trust shall cease and terminate and the residue of the property and fund held for the use and benefit of my said wife during her lifetime with any unapplied income thereof, shall be immediately paid over, conveyed, delivered and distributed to my said son, or to his issue if he be deceased, by right of representation.

d— If at the time of my said wife's death, my said son, Prentis Cobb Hale, Jr., be then living but has not reached the age of twenty-five (25) years, the said residue of said fund shall still be held by my said trustee, in trust, to collect the rents, issues and profits therefrom and apply the same for his use and benefit until he reaches the age of twenty-five (25) years, when the corpus of the said residue of my estate shall go to my said son, or in case of his death before reaching the age of twenty-five (25) years, to his issue by right of representation.

e— During the continuance of my trust my said Trustee shall take, collect and receive the rents, issues, profits, earnings and dividends of the trust property, real and personal, and shall pay therefrom the costs and expenses of the care, protection and upkeep of the trust property, including taxes, and the expenses of the trust.

Fifteenth: I give, devise and bequeath all of the rest, residue and remainder of all property and estate which I may own, or in which I may have any interest, or of which I may have any right or

power of testamentary disposition at the time of my death, whether real or personal and wheresoever situate, including any portion of my estate hereinbefore devised and bequeathed which shall fail of an identified or designated beneficiary, or which for any reason shall revert to and become a part of the residue of my estate, to my son, Prentis Cobb Hale, Jr.

Seventeenth: I have heretofore created and declared an irrevocable trust of which Bank of Italy National Trust and Savings Association is now the Trustee, in which I have placed 8716 shares of the capital stock of Hale Bros. Stores, Inc. and 3970 shares of the capital stock of Hale Bros. Realty Co., to be held for the use and benefit of my wife, Linda Hoag Hale, during her lifetime, and for the use of my son, Prentis Cobb Hale, Jr., after her death, and I hereby ratify and approve said trust in each and every particular.

[Endorsed]: Filed 2/9/43.

Mr. Wrixon: I also offer in evidence a certified photostatic copy of the decree of ratable distribution made and entered in the estate of Prentiss Cobb Hale, Sr., in the Superior Court of the City and County of San Francisco, State of California, No. 74,152, dated December 22, 1937.

Miss Phillips: No objection.

(The document referred to was marked Plaintiff's Exhibit No. 4 in evidence.)

PLAINTIFF'S EXHIBIT No. 4

DECREE OF RATABLE DISTRIBUTION

It Is Hereby Ordered, Adjudged and Decreed that there be and there is hereby distributed to Linda Hoag Hale the sum of Five Thousand Seven Hundred and Fifty Dollars (\$5,750.00) and Forty (40) shares of the capital stock of Bancamerica-Blair on account of income received by the said executrix and executors of the last will and testament of the decedent above named subsequent to January 1, 1937, and accrued on shares of stock heretofore distributed to the said Linda Hoag Hale under and pursuant to the terms of that certain decree of partial distribution made and entered herein on or about the 14th day of July, 1937;

It Is Hereby Further Ordered, Adjudged and Decreed that there be and there is hereby distributed to Bank of America National Trust and Savings Association, as trustee for Linda Hoag Hale, the sum of Five Thousand Four Hundred and Fifty Dollars (\$5,450.00) on account of income received by the said executrix and executors and accrued on shares of stock heretofore distributed to the said trustee under and pursuant to the terms of that certain decree of ratable distribution made and entered herein on or about the 29th day of July, 1937, which said moneys are to be distributed to the said trustee to be held and administered by it pursuant to the terms and provisions of said trust, as more specifically set forth in the said decree of ratable

distribution made and entered on the 29th day of July, 1937.

[Endorsed]: Filed 2/9/43.

Mr. Wrixon: I also offer in evidence a decree of partial distribution made and entered in the estate of Prentiss Cobb Hale, Sr., in the Superior Court of the State of California, in and for the City and County of San Francisco, No. 74,152, dated July 14, 1937.

Miss Phillips: No objection.

(The document referred to was marked Plaintiff's Exhibit No. 5 in evidence.) [31]

PLAINTIFF'S EXHIBIT No. 5

DECREE OF PARTIAL DISTRIBUTION

“Fourth: I believe and declare that all property which I own, or in which I have any interest, is my own separate property, but if any property in which I may be interested at the time of my death shall be found to be community property, and if my said wife shall elect to take any portion thereof under the community property laws of this State, then I direct that the property and estate hereinafter set apart in trust for her use during her lifetime be reduced in amount by the appraised value of the community property and estate which she shall elect to take.”

That the said petitioner has claimed and asserted that a large portion of the property purported to be

devised and bequeathed by the said decedent under the said last will and testament, was and is the community property of the said decedent and of the said petitioner; that the said petitioner, as the surviving wife of the said decedent was and is entitled, under the laws of the State of California to one-half of the said community property; that the amount and extent of the community property to which the said petitioner was and is so entitled have been controverted by the said Prentis Cobb Hale, Jr., in his individual capacity and as executor of the said last will and testament; that the said petitioner and the said Prentis Cobb Hale, Jr. desired to compromise and settle their said controversy without litigation and, to that end, the said petitioner, in her individual capacity and as executrix of the said last will and testament of the said decedent, and the said Prentis Cobb Hale, Jr., in his individual capacity and as executor of the said last will and testament of the said decedent, on the 18th day of June, 1937, entered into that certain agreement, dated the said 18th day of June, 1937, which agreement provides that the items of property, real and personal hereinafter particularly described, shall be distributed to the said petitioner, in satisfaction of the said one-half interest in the said community property to which the said petitioner was and is entitled; and that a copy of the said agreement is annexed to the said petition and is marked "Exhibit B" and is particularly referred to in the said petition and is incorporated therein by reference.

That the compromise and settlement agreed upon by the said Linda Hoag Hale and the said Prentis Cobb Hale, Jr., in and by the said agreement, dated the said 18th day of June, 1937, are in accordance with the provisions of the said paragraph "Fourth" of the said last will and testament; and that under and pursuant to the said paragraph "Fourth", the said petitioner is entitled to have the property hereinafter described distributed to her.

Now, Therefore, in consideration of the premises, It Is Hereby Ordered, Adjudged and Decreed that the said agreement be, and the same is hereby, approved; and

It Is Hereby Further Ordered, Adjudged and Decreed that, pursuant to the provisions of the said paragraph "Fourth" of the said last will and testament, and in accordance with the provisions of the said agreement, there be, and there is hereby, distributed to the said petitioner, Linda Hoag Hale, individually, the following described property:

4. Eight thousand (8,000) shares of the capital stock of Hale Bros. Stores, Inc., a Delaware corporation.

5. Two thousand (2,000) shares of the capital stock of Transamerica Corporation, a corporation organized and existing under the laws of the State of Delaware.

6. One hundred and fifty (150) shares of the capital stock of Hale Real Estate Company, a California corporation, having its office and principal place of business at Sacramento, California.

7. One thousand two hundred and twenty (1,220) shares of the capital stock of Hale Bros. Realty Company, a corporation.

[Endorsed]: Filed 2/9/43.

LEE SANFORD,

Called for the Plaintiff; Sworn.

Direct Examination.

Mr. Wrixon: Q. Mr. Sanford, you are associated with the Bank of America, National Trust & Savings Association, are you? A. I am.

Q. Will you state in what capacity you are employed?

A. I am assistant trust officer.

Q. Mr. Sanford, I show you a copy of Treasury Department Form 706, Federal-State Tax Return, which purports to represent a copy of the original return filed on behalf of Prentiss Cobb Hale, Sr., and particular Schedule 0-18. Will you state to the Court whether you prepared the original Form 706, Federal-State Tax Return, on behalf of the estate of Prentiss Cobb Hale, Sr.? A. I did.

Q. Will you state whether or not at the time the original Federal-State Tax Return was prepared any consideration was given to the question of whether a deduction should be taken for community property in the estate of Prentiss Cobb Hale, Sr.?

A. Yes, that question was considered.

(Testimony of Lee Sanford.)

Q. Will you state what decision you came to as a result of such consideration?

A. No attempt was made to exclude any portion of the estate.

Q. No deduction was taken on the original Federal-State tax return as filed, is that correct?

A. That is correct.

Q. Will you state whether or not any subsequent amended return or proceeding was taken directed toward obtaining a deduction for any such community property?

A. No such amended return was filed, nor was any attempt ever made.

Q. Will you state to the Court the amount of the gross estate of Prentiss Cobb Hale, Sr., as indicated by Schedule O on the Federal- [32] State tax return, valued as of the date of the death?

A. \$1,998,321.99.

Q. Will you state to the Court the amount of deduction claimed on the Federal-State tax return filed on behalf of Prentiss Cobb Hale, Sr.?

A. \$260,215.83.

Q. Mr. Sanford, I show you an agreement dated June 18, 1937, between Linda Hoag Hale and her son, Prentiss Cobb Hale, Jr., being Plaintiff's Exhibit 2 in evidence, and particularly Article 3 thereof, relating to 6,000 shares of Transamerica Corporation stock which are authorized to be distributed to Prentiss Cob Hale, Jr. I will also ask you to refer to Article 9 of Exhibit 2, stating that certain dividends on the 6,000 shares of Transamerica stock

(Testimony of Lee Sanford.)

should be distributed to Prentiss Coob Hale, Jr. I will ask you if you prepared a Federal income tax return on behalf of the estate of Prentiss Cobb Hale, Sr., for the calendar year 1937?

A. Yes, I did.

Q. I will ask you with respect to the dividend on the 6,000 shares of Transamerica stock, which are referred to in Article 3 of Exhibit 2, did you report the dividends on the 6,000 shares as being taxable to the plaintiff, Linda Hoag Hale?

A. I did not.

Miss Phillips: You say there was 6,000 shares distributed to Mr. Hale?

Mr. Wrixon: To Prentiss Cobb Hale, Jr.

Miss Phillips: I am not sure that I understood what the witness said.

The Court: Read the question and answer.

(Record read by the reporter.)

Miss Phillips: I do not see the purport of the answer to the question, but perhaps counsel can explain it. You asked if he [33] reported as taxable to Mrs. Hale the income on the 6,000 shares that were distributed to her son, and he said no, he did not.

Mr. Wrixon: That is correct.

Q. I will show you Plaintiff's Exhibit No. 4, a decree of ratable distribution, dated December 22, 1937, and particularly page 3 thereof, in which it is ordered that \$5,450 be distributed to the trustee under the testamentary trust created in Mr. Hale's will. Do the dividends in the amount of \$5,450

(Testimony of Lee Sanford.)

represented in Plaintiff's Exhibit 4, represent the dividend received by the estate of Prentiss Cobb Hale, Sr., subsequent to the date of his death and prior to July 29, 1937? A. Yes.

Q. Now, as to the date of July 29, 1937, which is referred to in the decree of ratable distribution, I will ask you, is the date of July 29, 1937, the date upon which the securities forming a part of the testamentary trust were distributed to the trustee under the testamentary trust? A. Yes.

Q. Do you know whether or not the shares distributed to the trustee under the testamentary trust consisted of 10,000 shares of Hale Bros. Stores, Inc., and 50 shares of Hale Real Estate Company?

A. That is right.

Q. Those were the securities that were distributed to the trustee on July 29, 1937, under the testamentary trust created by Mr. Hale in Article 13, were they not? A. That is right.

Mr. Wrixon: That is all.

Cross Examination

Miss Phillips: Q. Mr. Sanford, I take it that the Bank of America was one of the co-executors of the estate of Prentiss Cobb Hale?

A. No, the Bank of America was not one of the executors.

Q. Was it a trustee?

A. It was a testamentary trustee.

Q. You acted as testamentary trustee?

A. Yes. [34]

(Testimony of Lee Sanford.)

Q. In what capacity did you assist in preparing the State tax return?

A. The bank was appointed as a depository of the estate. We had the facilities for doing it and fell heir to the job.

Q. Do you know Mr. Hale's age at the time of his death, approximately?

A. I believe about 76.

Q. During the last ten years of his life had he been in active business, or had he semi-retired?

A. No; quite active.

Q. He had been active? A. Yes.

Q. In making his State tax return was it possible for you to allocate how much of the property owned by Mr. Hale, Sr., he had acquired prior to July, 1927, and how much of the corpus of the estate he had acquired subsequent to July 1927 by his own efforts?

A. Well, we did not believe it possible.

Q. You believed it not to be possible to make that allocation? A. Yes.

Q. Then under the Federal estate rule as to community property acquired in California under California laws since July, 1927, it was not possible for you to ascertain how much of that community property was acquired for the benefit of Mrs. Hale after July of 1927, is that the substance of it?

A. We did not feel justified in attempting to exclude any of it.

Q. You could not determine it so you included it, is that right? A. Yes.

(Testimony of Lee Sanford.)

Q. I am still doubtful on the treatment of the dividends referred to by counsel in his direct examination on the Transamerica. Under the will 8,000 shares of Transamerica were to go into the testamentary trust; under the agreement 2,000 shares went to Mrs. Hale and 6,000 shares went to her son. Now, in preparing the return by the trustee of the income on those shares, can you state how you [35] treated them?

A. The 6,000 shares were diverted to the residue of the estate, and the dividends on that stock actually distributed were charged to the distributees.

Q. It is my recollection of the evidence that the 6,000 shares went to the son. Is that incorrect? You said the 6,000 shares of Transamerica went into the testamentary trust.

A. No, they did not go into the testamentary trust, but the son being the residual legatee, they were allocated to him, to the residue, so it would naturally fall to him.

Q. As I understand it now, it went into the residue of the estate? A. Yes.

Q. Then in the estate tax return for 1937 you reported the dividends on the 6,000 shares as going to the estate, is that right? A. Yes.

Q. Counsel asked whether you reported that as income to the plaintiff and you said no. Now I ask you, did you treat that as income of the estate?

A. Yes.

Q. I see; that clears it up. I think that is all.
Mr. Wrixon: That is all.

J. GORDON HILL,

Called for the Plaintiff. Sworn.

Direct Examination

Mr. Wrixon: Q. Mr. Hill, you are a certified public accountant? A. I am.

Q. And you were a certified public accountant in the year 1937? A. I was.

Q. You are familiar with Mr. Hale's financial affairs, are you? A. I am.

Q. Did you personally prepare the Federal Income Tax Return on the [36] death of Mr. Hale for the calendar year 1937 and subsequent taxable years? A. I did.

Q. Mr. Hill, I will show you a claim for refund filed on behalf of the plaintiff, being Plaintiff's Exhibit 1 in evidence, and particularly page 2 thereof, listing certain dividends aggregating \$6,230. I will also show you Plaintiff's Exhibit 2 in evidence, being an agreement dated June 18, 1937, and particularly Article 8 thereof, stating that certain dividends should be paid to the plaintiff, Linda Hoag Hale. After examining these two exhibits can you state to the Court whether or not the dividends list-state to the Court whether or not the dividends list-dividends which are referred to in Article 8 of Plaintiff's Exhibit 2?

A. Yes, sir, they are.

Q. I will also ask you, Mr. Hill, whether the dividends in the amount of \$6,230, which are referred to on page 2 of Plaintiff's Exhibit 1, represent dividends declared on shares of stock described

(Testimony of J. Gordon Hill.)

in Article 1 of Plaintiff's Exhibit 2 during the period January 1, 1937, and June 18, 1937—excuse me. I would like to change the question to read paid or declared during the period from January 1, 1937, to June 18, 1937?

A. They are the dividends on the same stock.

Q. They represent the dividends paid or declared between January 1, 1937, and June 18, 1937, is that correct? A. They do.

Q. By whom were those dividends originally received?

A. By the executor and executrix of the estate of Prentiss Cobb Hale, Sr.

Q. After the receipt they were paid over to the plaintiff pursuant to Article 8 of Plaintiff's Exhibit 2, is that correct? A. They were.

Q. I show you a decree of ratable distribution dated December 22, [37] 1937, being Plaintiff's Exhibit No. 4 in evidence, and particularly the bottom of page 2 and the top portion of page 3, by which it is ordered that there be distributed to the plaintiff \$5,750 and 40 shares of the capital stock of Bancamerica—Blair, and I will ask you to review that portion of the decree. Will you state to the Court whether the dividends authorized to be distributed to the plaintiff under Plaintiff's Exhibit 4 in the amount of \$5,750 and 40 shares of Bancamerica—Blair, represent the same dividends that are listed in Plaintiff's Exhibit 1, amounting to \$6,230?

A. They do.

Q. Will you state to the Court how you reconcile

(Testimony of J. Gordon Hill.)

the amount of \$5,750 in the decree of ratable distribution with the amount of \$6,230 in plaintiff's claim for refund?

A. The sum of \$5,750 was paid as dividends in cash. In addition to that there were paid the dividends in kind, 40 shares of the capital stock of Bancamerica-Blair, having a value of \$12.00 per share, or a total of \$480.

Q. So the total of \$480 in value of the stock plus the \$5,750 in cash equals the \$6,230 represented by plaintiff's claim for refund, is that correct?

A. That is correct.

Q. I will ask you to state to the Court whether, in plaintiff's claim for refund, itemizing the \$6,230, there are any dividends paid on the stock of Transamerica Corporation? A. There are.

Q. Will you state to the Court the dates of the dividend, and the amounts?

A. On February 1, 1937, there was paid or declared a dividend in cash of 20 cents per share, on 2,000 shares, making \$400, and also 40 shares of Bancamerica-Blair stock at \$12.00 per share, having a total value of \$480.

Q. I will now show you Plaintiff's Exhibit 2, being an agreement dated June 18, 1937, and particularly Article 2 thereof, on page 8, [38] reciting that certain real property and shares of stock be distributed to the plaintiff. Were the properties which I have described in Article 1 actually distributed to the plaintiff, to your knowledge?

A. They were.

(Testimony of J. Gordon Hill.)

Q. I will also show you Plaintiff's Exhibit 2, Article 9, on page 13, which provides that certain dividends on 6,000 shares of Transamerica Corporation stock be distributed to Prentiss Cobb Hale, Jr. Were dividends on the 6,000 shares of Transamerica stock which were distributable to Prentiss Cobb Hale, Jr., reported in the income tax return of the plaintiff during the year 1937?

A. They were not.

Q. Were they reported by the plaintiff in any other taxable year? A. They were not.

Q. I will also show you Article 10 of Plaintiff's Exhibit No. 2, which provides that a monthly allowance in the sum of \$1,500 per month be paid to the plaintiff, commencing as of the date of death of the decedent, and continuing until July 20, 1937. Will you state to the Court whether or not that family allowance of \$1,500 per month was paid during the period from the date of death to July 20, 1937? A. It was paid to Mrs. Hale.

Q. Mr. Hill, will you state to the Court whether the plaintiff had any independent income of her own during the calendar year 1937 other than income received from or through the estate of Prentiss Cobb Hale, Sr.?

A. Yes, she had other income.

Q. Would you state to the Court the approximate amount of such other income?

A. About \$18,000.

Q. What is the total amount of gross income re-

(Testimony of J. Gordon Hill.)

ported by Mrs. Hale on her individual income tax return for the calendar year 1937?

A. \$59,241.06.

Q. What is the net income reported by Mrs. Hale on her 1937 Federal [39] income tax return?

A. \$57,016.73.

Mr. Wrixon: That is all.

Cross Examination

Miss Phillips: Q. Of the total gross amount of which you say \$18,000 represented income of her own, there was a considerable portion that she reported as fiduciary income, was there not?

A. Yes.

Q. As the beneficiary of the trust?

A. That is true.

Q. And that would include income from properties acquired during the lifetime of Mr. Hale not involved in this case at all?

A. That is correct.

Q. The income which Mrs. Hale received from the stock transferred to her by the executors was reported in her income tax return for 1937 under the head of fiduciary income, was it not?

A. It was.

Q. That is, it does not appear as separate items, but these two amounts in controversy here appear as fiduciary income on her own return?

A. That is correct.

Miss Phillips: I think that is all I have to ask Mr. Hill.

Mr. Wrixon: I have no further questions, your Honor. If your Honor desires, we can submit some oral argument at this time, or if you prefer, we will submit it on briefs, or both.

The Court: I do not care for any argument now if you are going to submit it on briefs.

Miss Phillips. I am not offering any evidence, but I would like the record to show a motion for judgment in the defendant's favor. I think counsel and I are prepared to argue it orally, but I think it would be better to submit briefs.

The Court: I do not know how extensive the briefs should be. It may only be necessary to make a brief statement of the fact and [40] cite the cases which the Court should consider.

Miss Phillips: Very well.

Mr. Wrixon: May the record show a motion for judgment on behalf of the plaintiff?

The Court: Yes.

How much time do you want?

Mr. Wrixon: May I have ten days?

The Court: Yes. How much time do you wish Miss Phillips?

Miss Phillips: Ten days.

Mr. Wrixon: And then may plaintiff have five days to reply?

The Court: Yes.

The case will be submitted on briefs, ten, ten, and five.

[Endorsed]: Filed Apr. 14, 1943. [41]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Linda H. Hale, Plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on May 13, 1943.

Dated: June 18, 1943.

L. W. WRIXON,
Attorney for Plaintiff.

[Endorsed]: Filed Jun 18, 1943. [42]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

The plaintiff, Linda H. Hale, hereby designates the complete record and proceedings in the above entitled cause for inclusion in the record on appeal of said cause to the Circuit Court of Appeals for the Ninth *District*.

Dated June 25, 1943.

L. W. WRIXON,
Attorney for Plaintiff.

Personal service of notice of the within Designation of Record on Appeal together with a copy thereof is admitted this 25 day of June, 1943.

FRANK J. HENNESSY,
United States Attorney.

By ESTHER B. PHILLIPS,
Assistant United States At-
torney.

[Endorsed]: Filed June 29, 1943. [43]

[Title of District Court and Cause.]

STIPULATION AS TO CONTENTS OF
RECORD ON APPEAL

It is hereby stipulated and agreed by and between the parties hereto that the following designated portions of the record in the above entitled cause shall constitute the record of said cause on appeal to the Circuit Court of Appeals for the Ninth Circuit:

- (1) Complaint;
- (2) Answer;
- (3) Opinion;
- (4) Order for Judgment;
- (5) Findings of Fact and Conclusions of Law;
- (6) Judgment;
- (7) Notice of Appeal;
- (8) Order for Delivery of Exhibits; [44]
- (9) All Exhibits offered in evidence;
- (10) Designation of Record on Appeal;
- (11) All Orders extending Time to Docket Appeal;
- (12) Reporter's Transcript;
- (13) Stipulation as to Contents of Record on Appeal.

L. W. WRIXON,

Attorney for Plaintiff.

FRANK J. HENNESSY,

United States Attorney.

ESTHER B. PHILLIPS,

Assistant United States At-
torney.

[Endorsed]: Filed Jun. 29, 1943. [45]

[Title of District Court and Cause.]

ORDER FOR DELIVERY OF EXHIBITS

To the Clerk of the Above Entitled Court:

You are hereby ordered to deliver to the Circuit Court of Appeals for the Ninth Circuit, for use in the appeal of the above entitled cause, all of the Exhibits offered in evidence on the hearing of this case.

Dated: June 19, 1943.

A. F. ST. SURE,

Judge of the United States
District Court.

[Endorsed]: Filed June 19, 1943. [46]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 46 pages, numbered from 1 to 46, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Linda H. Hale, Plaintiff, vs. Clifford C. Anglim, Etc., Defendant. No. 22344-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Seven-dollars and forty-cents (\$7.40), and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 21st day of July, A. D. 1943.

[Seal]

C. W. CALBREATH,
Clerk.

WM. J. CROSBY,
Deputy Clerk.

[Endorsed]: No. 10505. United States Circuit Court of Appeals for the Ninth Circuit. Linda H. Hale, Appellant, vs. Clifford C. Anglim, Individually, and as Collector of Internal Revenue for the First District of California, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 26, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10505

LINDA H. HALE,

Appellant,

vs.

CLIFFORD C. ANGLIM, individually and as Col-
lector of Internal Revenue for the First Dis-
trict of California,

Appellee.

DESIGNATION OF THE RECORD TO BE
PRINTED

It Is Hereby Stipulated that the following men-
tioned and designated portion of the record shall
constitute the record to be printed on this appeal:

1. Complaint
2. Answer
3. Opinion
4. Order for Judgment
5. Findings of Fact and Conclusions of Law
6. Judgment
7. Notice of Appeal
8. Order for Delivery of Exhibits
9. Designation of Record on Appeal
10. All Orders extending Time to Docket Appeal
11. Reporter's Transcript
12. Stipulation as to Contents of Record on
Appeal

13. Following mentioned portions of Refund Claim—(Exhibit 1):

a. Page 1 and paragraphs numbered 1, 2, 3, 4 and 6.

14. Following mentioned portions of Agreement dated June 18, 1937—(Exhibit 2):

a. Names of parties and capacities—page 1

b. Second paragraph on page 6 and all of pages 7, 8 and 9

c. Articles 8, 9 and 10 commencing on page 12 and continuing to top of page 14

15. Following mentioned portions of Last Will and Testament—(Exhibit 3):

a. Articles Fourth, Twelfth, Thirteenth, Fifteenth and Seventeenth

16. Following mentioned portions of Decree of Ratable Distribution dated December 2, 1937—(Exhibit 4):

a. Commencing with the last paragraph at bottom of page 2 and continuing to top of page 3 relating to distribution of \$5,750. and 40 shares of Bancamerica-Blair stock and

b. Paragraph distributing \$5,450. to Bank of America as trustee for Linda H. Hale.

17. Following mentioned portions of Decree of Partial Distribution dated July 14, 1937—(Exhibit 5):

a. Commencing with second paragraph on page 4 and continuing to and including second paragraph commencing on page 5, approving agreement of June 18, 1937

b. Third paragraph commencing on page 5, including however, only items numbered 4, 5, 6 and 7 of the said third paragraph, as shown on page 8

L. W. WRIXON,
Attorney for Appellant.

FRANK J. HENNESSY,
United States Attorney.

By [Illegible]

Asst. U. S. Atty.

ESTHER B. PHILLIPS,
Assistant United States At-
torney.

Attorneys for Appellee.

[Endorsed]: Filed July 26, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON AP-
PEAL

The first point upon which Appellant relies is:

I.

The amount of Six Thousand Two Hundred and Thirty (\$6,230.00) Dollars received by Appellant in 1937 from the Estate of her deceased husband represented an amount paid to Appellant in compromise of contemplated litigation concerning Appellant's interest in the Estate of her deceased hus-

band, or in the alternative was received by Appellant as part of a compromised settlement of Appellant's claimed interest in the community property accumulated during the marriage of Appellant and her deceased husband and did not constitute taxable income to Appellant in the year 1937.

II.

The Second point upon which Appellant relies is:

The amount of Five Thousand Four Hundred and Fifty (5,450.00) Dollars received by Appellant in the year 1937 from the Estate of her deceased husband represented dividends received by the Estate of her deceased husband subsequent to the date of his death and prior to distribution of certain securities to the Trustee under a Testamentary Trust created by the Will of Appellant's deceased husband, and accordingly such sum of Five Thousand Four Hundred and Fifty (5,450.00) Dollars represents income taxable to the Estate of Appellant's deceased husband, and does not represent income taxable to Appellant in 1937.

L. W. WRIXON,

Attorney for Appellant.

[Endorsed]: Filed July 26, 1943. Paul P. O'Brien, Clerk.

